

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

IAN PINCOMBE,

Plaintiff,

vs.

CHARLOTTE COLLINS et. al.,

Defendant.

Case No. 2:14-cv-01328-RCJ-GWF

**ORDER**

Application to Proceed in Forma  
 Pauperis (#1) and Screening of the  
 Complaint

This matter is before the Court on Ian Pincombe's Application to Proceed *In Forma Pauperis* and Civil Rights Complaint Pursuant to 42 U.S.C. § 1983 (#1), filed on August 14, 2014.

**BACKGROUND**

Plaintiff alleges in his complaint that Defendants Charlotte Collins and the Corrections Corporation of America have denied him access to the courts by refusing to allow him to print all of his legal documents and reading his correspondence with his attorney. Plaintiff alleges only one cause of action, but it contains numerous allegations of wrongdoing and violated rights. Plaintiff is in federal custody and is awaiting trial in a criminal case.<sup>1</sup> Plaintiff alleges that he is attempting to assist his attorneys by performing legal research at the prison library. He claims that the law librarian, Mrs. Tigrett, has refused to print his legal documents. Mrs. Tigrett allegedly told the Plaintiff that she would not print the documents because it was regarding jurisdiction and the public defender's office said it was not necessary, because jurisdiction is within the attorney's scope of the action. The Plaintiff contends that Mrs. Tigrett had no right to read the documents, since they are privileged, and the research he is doing is necessary for his defense. He alleges that the public defender's office will only file motions or cooperate with his defense if he provides them with case

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<sup>1</sup> See *United States v. Ian Pincombe*, Case. No. 2:14-cr-00178-JAD-GWF.

1 law. Plaintiff filed an informal grievance over these actions on June 20, 2014. The Staff, in its July  
 2 2, 2014 response, told the Plaintiff that “Per policy 14-8 and *Lewis v. Casey* you do not qualify for  
 3 assistance. Legal document will not be provided.”

4 Plaintiff filed a formal grievance on July 3, 2014, in which he cited *Gluth v. Kansas* and  
 5 argued that *Lewis v. Casey* did not support the facility’s position. He then requested more than one  
 6 hour per day of library time, that he be allowed more than three copies of documents and case law,  
 7 that the facility provide full data on uncensored cases, that the facility provide legal forms and that  
 8 documents that are printed are not to be taken off site or read. The facility declined all of his  
 9 requests in its response, again relying on *Lewis v. Casey*. The facility noted, however, that he is  
 10 free to use the law library, and simply needs to schedule a time.

11 On August 8, 2014, the Plaintiff took his grievance to the Warden. The Plaintiff claims the  
 12 Warden promised to resolve the situation and get the Plaintiff his printed materials on August 11,  
 13 2014. Plaintiff, as of the filing of this case on August 14, 2014, had not yet received his printed  
 14 materials. Plaintiff alleges that the actions of the facility constitute a violation of his right of access  
 15 to the courts and a violation of the attorney-client privilege. Plaintiff asks that he be allowed to  
 16 print his motions in a timely fashion without them being read, and to be allowed to have three or  
 17 more copies of motions or legal materials that are critical to his defense.

## 18 DISCUSSION

### 19 **I. Application to Proceed In Forma Pauperis**

20 Plaintiff filed this instant action and attached a financial affidavit to his application and  
 21 complaint as required by 28 U.S.C. § 1915(a). Reviewing the financial affidavit pursuant to 28  
 22 U.S.C. § 1915, the Court finds that Plaintiff is unable to pre-pay the filing fee. As a result,  
 23 Plaintiff’s request to proceed in forma pauperis in federal court is **granted**.

### 24 **II. Screening the Complaint**

25 Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint  
 26 pursuant to 28 U.S.C. § 1915(e). Specifically, federal courts are given the authority to  
 27 dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which  
 28 relief may be granted, or seeks monetary relief from a Defendant/Third Party Plaintiff who is

1 immune from such relief. 28 U.S.C. § 1915(e)(2). A complaint, or portion thereof, should be  
2 dismissed for failure to state a claim upon which relief may be granted “if it appears beyond a  
3 doubt that the plaintiff can prove no set of facts in support of his claims that would entitle him to  
4 relief.” *Buckey v. Los Angeles*, 968 F.2d 791, 794 (9th Cir. 1992). A complaint may be dismissed  
5 as frivolous if it is premised on a nonexistent legal interest or delusional factual scenario. *Neitzke*  
6 *v. Williams*, 490 U.S. 319, 327–28 (1989). Moreover, “a finding of factual frivolousness is  
7 appropriate when the facts alleged rise to the level of the irrational or the wholly incredible,  
8 whether or not there are judicially noticeable facts available to contradict them.” *Denton v.*  
9 *Hernandez*, 504 U.S. 25, 33 (1992). When a court dismisses a complaint under § 1915(e), the  
10 plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies,  
11 unless it is clear from the face of the complaint that the deficiencies could not be cured by  
12 amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

13 The Court shall liberally construe a complaint by a pro se litigant. *Eldridge v. Block*, 832  
14 F.2d 1132, 1137 (9th Cir. 2007). This is especially important for civil rights complaints. *Ferdik v.*  
15 *Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992). However, a liberal construction may not be used to  
16 supply an essential element of the claim absent from the complaint. *Bruns v. Nat’l Credit Union*  
17 *Admin.*, 12 F.3d 1251, 1257 (9th Cir. 1997) *quoting Ivey v. Board of Regents*, 673 F.2d 266, 268  
18 (9th Cir. 1982).

19 Plaintiff has brought his action against Defendants pursuant to 42 U.S.C. § 1983. A civil  
20 rights action pursuant to § 1983 may only be brought against those acting under color of *state* law.  
21 The Corrections Corporation of America (“CCA”) operates the detention facility in which Plaintiff  
22 is detained under an agreement with the United States Bureau of Prisons, and is therefore  
23 considered a federal actor. *Gugliemi v. Federal Bureau of Prisons*, 2013 WL 6844776 (D. Nev.  
24 2013). Federal actors are distinct from state actors, and therefore cannot be sued under § 1983. *Id.*  
25 A federal equivalent to a § 1983 suit for damages is a *Bivens* action. *Bivens* allows a prisoner to  
26 bring an action for damages against an individual or group that is “acting under the color of federal  
27 law.” The 9th Circuit has recognized that a private prison are acting “under the color of federal  
28 law.” *Pollard v. GEO Group, Inc.*, 607 F.3d 583, 588-589 (9th Cir. 2010), *reversed on other*

1 grounds by *Minneeci v. Pollard*, 132 S.Ct. 617 (2012). However, this is not an action for damages,  
2 which makes *Bivens* inapplicable in this case.

3 With the requisite liberal construction of the complaint, the Court finds that the Plaintiff is  
4 seeking an injunction against the detention facility's alleged conduct, practice or policy of reading  
5 his legally related mail and refusing to print certain legal documents. Injunctions may be sought  
6 against federal actors by those in prison in order to prevent violations of constitutional rights.  
7 *Simmat v. U.S. Bureau of Prisons*, 413 F.3d 1225, 1231 (10th Cir. 2010). In order for the Plaintiff  
8 to obtain an injunction in this case, he must demonstrate that he is likely to succeed on the merits,  
9 that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of  
10 equities tips in his favor, and that an injunction is in the public interest. Because Plaintiff has not  
11 pled these requirements with specificity, the Court will recommend the complaint be dismissed  
12 without prejudice to give the Plaintiff an opportunity to amend the complaint. Because there are  
13 actionable claims present in the complaint, the Court will still consider the merits of Plaintiff's  
14 current pleadings.

15 Plaintiff alleges that the detention facility's conduct in reading the documents he prints, be  
16 they legal pleadings such as motions or case law, violates the attorney-client privilege. The  
17 conduct of a prison official in reading an inmate's letters to his attorney is an actionable claim, as it  
18 can constitute a violation of the Sixth Amendment. *See Nordstrom v. Ryan*, 762 F.3d 903, 910  
19 (9th. Cir. 2014). In holding that the plaintiff had alleged an actionable claim under the Sixth  
20 Amendment, the court stated:

21 We emphasize that nothing prevents the ADC from *inspecting* an  
22 inmate's outgoing mail, in his presence, to make sure that it does not  
23 contain, for example, a map of the prison yard, the time of guards'  
24 shift changes, escape plans, or contraband. What the Constitution  
does *not* permit, however, is *reading* outgoing attorney-client  
correspondence.

25 *Nordstrom*, 762 F.3d at 910-911 (emphasis original).

26 Plaintiff's complaint is unclear as to exactly what was read by the detention facility  
27 officials. Plaintiff alleges that "[t]he facility's policy on printing motions violates my due process  
28 and access to the Court. Every motion I need printed has to be approved by upper level

1 management which inherently means that my motions are being read and analyzed in direct  
2 violation of due process and attorney-client privilege.” *Complaint (#1)*, pg. 3. The Court finds that  
3 this allegation sufficiently alleges a violation of Plaintiff’s Sixth Amendment rights.

4 Plaintiff also claims that the prison is refusing to print his motions is a violation of his right  
5 of access to the Courts. Plaintiff cites *Gluth v. Kangas*, 951 F.2d 1504 (9th Cir. 1991) as the basis  
6 for his claim. In *Gluth*, prisoners challenged the prison’s policies in regard to the use of the law  
7 library. *Gluth*, 951 F.2d at 1509. The court held that “[i]t is the state’s burden to provide  
8 meaningful access [to the law library] and to demonstrate that its chosen method is adequate.” *Id.*  
9 Plaintiff alleges that the Defendants have violated this right by interfering with his use of the library  
10 and his ability to print documents.

11 Prisoners do not cede their right of access to the courts upon incarceration. *Lewis v. Casey*,  
12 518 U.S. 343, 346 (1996). The Supreme Court has found this right to be “fundamental” and that it  
13 “requires prison authorities to assist inmates in the preparation and filing of the meaningful legal  
14 papers.” *Bounds v. Smith*, 430 U.S. 817, 828 (1977). However, there is not “an abstract,  
15 freestanding right to a law library or legal assistance” while incarcerated. *Lewis*, 518 U.S. at 351.  
16 The Court in *Bounds* “encourage[d] local experimentation” when it came to providing legal  
17 assistance. 430 U.S. at 832. It is possible for prisons to eliminate libraries entirely and still be in  
18 compliance with *Bounds*, so long as there is an alternative form of legal assistance available.  
19 *Lewis*, 518 U.S. at 352. In pleading an injury to the his right of access to the Courts, the plaintiff  
20 must show an “actual injury” in order to have standing to bring the claim. *Id.* at 349. “Actual  
21 injury” means “actual prejudice with respect to contemplated or existing litigation, such as the  
22 inability to meet a filing deadline or present a claim.” *Id.*

23 Under *Lewis*, Plaintiff has not alleged any harm that would constitute “actual injury.”  
24 Plaintiff’s most serious allegation in regard to his right of access to the courts is that he does not  
25 have the right to print more than two copies of documents, or, in some cases, any copies of the  
26 documents. There is no allegation that he cannot have access to the documents, or conduct the  
27 research, or take notes that he may wish to send to counsel. Plaintiff has not alleged that he is  
28 barred from any form of legal assistance, or that he is unable to communicate with counsel.

1 Plaintiff may be able to cure, through amendment of his complaint, the pleading defects regarding  
 2 his claim that Defendants have violated his right of access to the courts by refusing his request for  
 3 copies of legal documents. The Court will partially dismiss Plaintiff's complaint, with leave to  
 4 amend.

5 In the event Plaintiff elects to proceed in this matter by filing an amended complaint, he is  
 6 informed that the Court cannot refer to a prior pleading to make his amended complaint complete.  
 7 Local Rule 15-1 requires that an amended complaint be complete in itself without reference to any  
 8 prior pleading. This is because, as a general rule, an amended complaint supersedes the original  
 9 complaint. *See Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967). Once Plaintiff files an amended  
 10 complaint, the original pleading no longer serves any function in the case. Therefore, in an  
 11 amended complaint, as in an original complaint, each claim and the involvement of each defendant  
 12 must be sufficiently alleged. Accordingly,

13 **IT IS HEREBY ORDERED** that Plaintiff's Application to Proceed *In Forma Pauperis*  
 14 (#1) is **granted**. Plaintiff shall not be required to pay an initial partial filing fee. However, even if  
 15 this action is dismissed, the full filing fee must still be paid pursuant to 28 U.S.C. § 1915(b)(2).

16 **IT IS FURTHER ORDERED** that Plaintiff is permitted to maintain this action to  
 17 conclusion without the necessity of prepayment of any additional fees or costs or the giving of  
 18 security therefor. This Order granting leave to proceed *in forma pauperis* shall not extend to the  
 19 issuance of subpoenas at government expense.

20 **IT IS FURTHER ORDERED** that the Clerk of the Court shall file the Complaint (#1-1).

21 **IT IS FURTHER ORDERED** that the portion of Plaintiff's Complaint (#1-1) which  
 22 alleges that Defendants have violated his right of access to the courts is **dismissed**, without  
 23 prejudice.

24 **IT IS FURTHER ORDERED** that Plaintiff shall have thirty (30) days from the date of this  
 25 order to file an amended complaint. If Plaintiff does not file an amended complaint, this action


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1 shall proceed on his claim for violation of his Sixth Amendment rights based on the Defendants'  
2 alleged conduct in reading legal documents prepared by him for his counsel.

3 DATED this 6th day of November, 2014.

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6 GEORGE FOLEY, JR.  
7 United States Magistrate Judge  
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